

MF 01-8

Tax Type: Motor Fuel Use Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC INC., TRANSPORT  
Taxpayer**

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**Docket #**

**00-ST-0000**

**IFTA #**

**IL000000000**

**BDN #**

**Barbara S. Rowe  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. David R. Reid, attorney at law for ABC Inc., Transport; Mr. Charles Hickman, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The Illinois Department of Revenue (hereinafter referred to as the "Department") issued a Correction of Returns or Determination of Motor Fuel Tax due to ABC Inc. Transport (hereinafter referred to as the "Taxpayer") for the first quarter of 1995 through the third quarter of 1998. The assessment was based upon International Fuel Tax Agreement (hereinafter referred to as "IFTA") returns. The taxpayer requested an abatement of penalties arguing that the company had used a professional accounting tax firm to prepare its returns prior to the early 1990's and followed the same format used by the professional firm for its preparation of returns for the period at issue. In addition, the taxpayer asserts that the computation of the state of Oregon miles for IFTA purposes is confusing. After reviewing the record, it is recommended that the liability in question be upheld in full.

### **FINDINGS OF FACT:**

1. The *prima facie* case of the Department was established by the admission into evidence of the Correction of Returns or Determination of Motor Fuel Tax Due for the first quarter of 1995 through the second quarter of 1998 establishing a tax liability of \$12,738.83 and a corresponding penalty of \$1,274.00 (Tr. p. 18)
2. The taxpayer was the subject of an IFTA audit. The auditor made three different types of adjustments: 1) the miles and fuel attributable to the state of Oregon; 2) unreported or misallocated miles; and 3) math errors in preparing the returns. The majority of the liability was due to the miles attributable to the state of Oregon reported by the taxpayer but for which the taxpayer did not report the fuel. (Tr. pp. 12-16)
3. The state of Oregon does not collect tax on the IFTA return. (Tr. p. 16)
4. The taxpayer concedes all of the tax adjustments and the only issue is the abatement of penalties. (Tr. p. 8)

### **CONCLUSIONS OF LAW:**

The Illinois Motor Fuel Tax Law (35 **ILCS** 505/1 et seq.) provides that the Department may enter into the International Fuel Tax Agreement (IFTA) at 35 **ILCS** 505/14a. The purpose of IFTA is "to establish and maintain the concept of one fuel use license and administering base jurisdiction for each licensee and to provide that a licensee's base jurisdiction will be the administrator of the Agreement and execute all its provisions with respect to such licensee." (See IFTA Articles of Agreement §R150). The Illinois Motor Fuel Tax Act at 35 **ILCS** 505/13a.2 requires that:

Each motor carrier shall keep records which accurately reflect the type and number of gallons of motor fuel consumed, the number of miles traveled with each type of fuel on the highways of each jurisdiction and the highways of Illinois, the type and number of gallons of tax paid fuel purchased in this State

and every jurisdiction, and the number of miles traveled and the amount of fuel consumed on the highways of this State and every jurisdiction.

The Department imposed the 10% penalty on the taxpayer for the late payment of the motor fuel tax pursuant to section 13a.3 of the Illinois Motor Fuel Tax Law. (35 **ILCS** 505/1 *et seq.*) Article XII of the IFTA Articles of Agreement provides for the imposition of the 10% penalty (*See* §R1220.100) and a waiver of those penalties for reasonable cause. (§R1260.100) The Department's regulations also provide that the penalty may be abated for reasonable cause. (86 Ill. Admin. Code §500.335(1)) The Department's regulations concerning reasonable cause state:

The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.

A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return. (86 Ill. Admin. Code §700.400(b) & (c))

The taxpayer asserts that it is entitled to an abatement of penalties because the state of Oregon does not collect tax on the IFTA return and that this is a different procedure than the majority of other states follow. The taxpayer also asserts that it followed the same procedures in filling out the returns at issue that had been used by an accounting firm in Omaha, Nebraska that had prepared the taxpayer's prior returns. (Tr. pp. 22-23) The only documentary evidence provided by the taxpayer were some IFTA motor fuel returns for a period prior to the one at issue. (Taxpayer's Ex. Nos. 1-3) There was no evidence provided to show who had prepared

those returns. The taxpayer provided no documentary evidence to support the claim that the taxpayer in fact followed the same procedures in filling out the returns at issue as had been used by an accounting firm in Omaha, Nebraska.

The IFTA return is the form on which entities that travel interstate report miles and fuel. The laws of the taxpayer's home state of Illinois provide that there is a tax on fuel and that the miles traveled and the fuel consumed in other jurisdictions are to be reported to Illinois. The taxpayer defends that Oregon didn't collect tax on the IFTA return. However, there was no indication that the taxpayer did anything to find out if the way it filled out the IFTA return for Illinois was proper. Clearly, the taxpayer could have telephoned the Department or inquired if a tax preparer had ascertained if it was reporting the fuel and miles properly. The taxpayer took no reasonable steps nor made any inquiry to find out the proper way to report the fuel and miles for Illinois.

The rules for an abatement of penalties for reasonable cause state that a taxpayer needs to exercise ordinary business care and prudence to get an abatement. Using ordinary business care, a person in a particular type of industry would acquaint themselves with the laws that govern that business. The fact that the taxpayer presumed that it did not need to report the fuel used in Oregon because it was not recorded on the Oregon IFTA return is not a defense for reasonable cause. If no reasonable steps are taken to ascertain what the law is governing a situation, there is no reasonable cause for an abatement of penalties.

I find that the taxpayer has failed to establish reasonable cause for an abatement of the penalties at issue. It is therefore recommended that the liability be upheld in its entirety.

Respectfully Submitted:

Date: February 20, 2001

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Barbara S. Rowe  
Administrative Law Judge